

REMARKS

Applicants express their appreciation to the Examiner for considering the application.

In the Office Action, claims 1, 3, and 8-9 were rejected under Section 102 in view of U.S. Patent Application No. 5,948,069 by Kitai et al. ("Kitai"). Claims 2, 4, 11, and 13-16 were rejected under Section 103 in view of Kitai combined with U.S. Patent No. 5,910,951 to Pearce et al. ("Pearce"). Claims 5 and 17 were rejected under Section 103 in view of Kitai combined with U.S. Patent No. 6,546,423 to Dutta et al. ("Dutta"). Claims 6 and 7 were rejected under Section 103 in view of Kitai combined with U.S. Patent No. 6,195,680 to Goldszmidt et al. ("Goldszmidt"). Claims 10, 12, and 18 were rejected under Section 103 in view of Kitai combined with U.S. Patent No. 6,209,039 to Albright et al. ("Albright"). Claims 19-21 were rejected under Section 103 in view of Kitai combined with Pearce and also with Goldszmidt.

For at least the reasons explained below, all rejections should be withdrawn.

Section 102 Rejections based on Kitai

Claims 1, 3, and 8-9 were rejected under Section 102 in view of Kitai. It is well-established law that a rejection under Section 102 is not proper when the cited reference fails to teach any of the claimed limitations -- all claimed limitations must be taught by the reference, or else the rejection will be overturned. See, e.g., M.P.E.P. § 2131 and cases cited therein. As explained below, the rejections of claims 1, 3, and 8-9 are not proper because Kitai fails to teach the "private networks" limitations of those claims.

Claim 1 is limited to "private networks". Claim 1 is expressly limited to a "controller which controls access to multiple independent private networks...." Claim one expressly recites "at least two private network interfaces". A "private network interface" is an interface to a "private network"; see, e.g., the application at page 16 lines 1-3, which states: "The controller 502 also includes two or more private network interfaces 706, namely, so there is at least one interface 706 per private network 106 to which the controller 502 controls access." (emphasis added). Thus, "private networks" are clearly limitations of claim 1, and hence "private networks" are also limitations of dependent claims 3 and 8-9.

What, then, is a "private network"? This term is defined by applicants, in an exercise of the well-established right of patent applicants to be their own lexicographers:

"Frame relay networks are an example of a 'private network'. Another example is a point-to-point network, such as a T1 or T3 connection." Application at page 2 lines 3-4.

" 'Frame relay networks' or 'private networks' does not rule out the use of an ISDN link or other backup for a particular frame relay or point-to-point private network, but it does require the presence of multiple such networks – Figure 2, for instance, does not meet this requirement." Application at page 9 lines 16-20.

"The present invention provides tools and techniques for accessing multiple independent frame relay networks and/or point-to-point (e.g., T1 or T3) network connections in a parallel network configuration." Application at page 5 lines 20-22 (summary of invention).

In short, "private networks" as claim limitations are frame relay networks and/or point-to-point networks.

Kitai does not teach such private networks. A keyword search of Kitai reveals no use of "frame relay", and no use of "point-to-point". There is likewise no discussion of "T1" or "T3" connections in Kitai. The term "private network" was coined for use in the present application, so it would not necessarily mean the same thing even if it were present in Kitai, but it is not present in Kitai. Accordingly, Applicants respectfully submit that Kitai does not teach private networks.

Because Kitai fails to teach the "private networks" limitations of claim 1 and its dependent claims, it is not proper to reject those claims under Section 102 based on Kitai. The rejections should be withdrawn.

Section 103 Rejections based on Kitai with Pearce

Claims 2, 4, 11, and 13-16 were rejected under Section 103 in view of Kitai combined with Pearce. As a justification for combining Kitai and Pearce, the Office Action asserts at the top of page 5 that the combination would have been obvious "because it would have an efficient communication system to control and select the reliable, qualifiable network among multiple

networks.” But this is not a teaching of the prior art – it is an unsupported assertion by the Office. No supporting citation to Kitai, to Pearce, or to any other source of prior art is given. It is well-established patent law that a rejection under Section 103 requires evidence of a suggestion or motivation in the prior art to combine the references. See, e.g., M.P.E.P. §§ 2142, 2143.01, and cases cited therein. A general unsupported assertion that the combination would be efficient and reliable is not specific evidence that one of skill would have combined these two particular references. For at least this reason, the rejections under Section 103 based on Kitai with Pearce should be withdrawn.

Furthermore, Pearce does not teach private networks. Independent claim 13, like independent claim 1, expressly requires “private networks” and “private network interfaces” (namely, interfaces to private networks). But a keyword search of Pearce reveals no use of “frame relay”, and no use of “point-to-point”. There is likewise no discussion of “T1” or “T3” connections in Pearce. There is no use of “private network” in Pearce. As noted above, Kitai does not teach private networks. Neither does Pearce. Even if Pearce and Kitai are combined, they fail to teach the “private network” limitations of independent claims 1 and 13, and hence of their dependent claims. Accordingly, this lack of private network teaching is another reason the rejections under Section 103 based on Kitai with Pearce should be withdrawn.

Section 103 Rejections based on Kitai with Dutta

Claims 5 and 17 were rejected under Section 103 in view of Kitai combined with Dutta. As a justification for combining Kitai and Dutta, the Office Action asserts on page 9 that the combination would have been obvious “because it would improve the data transferring more secure and efficient.” But this is not a teaching of the prior art – it is an unsupported assertion by the Office. No supporting citation to Kitai, to Dutta, or to any other source of prior art is given. A general unsupported assertion that the combination would be secure and efficient is not specific evidence that one of skill would have combined these two particular references. For at least this reason, the rejections under Section 103 based on Kitai with Dutta should be withdrawn.

Furthermore, Dutta does not teach private networks as claimed. A keyword search of Dutta reveals no use of "frame relay", and no use of "point-to-point". There is likewise no discussion of "T1" or "T3" connections in Dutta. Even if Kitai and Dutta are combined, they fail to teach the "private network" limitations of the claims. Accordingly, this lack of private network teaching is another reason the rejections under Section 103 based on Kitai with Dutta should be withdrawn.

In addition, Dutta load balances between *servers*, not between *networks*; see, e.g., Dutta at column 4 line 63 through column 5 line 8 ("load balancing by the firewall in response to changing load conditions at the servers"). Indeed, Dutta does not even use the plural term "networks". For this reason as well, the rejections under Section 103 based on Kitai with Dutta should be withdrawn.

Section 103 Rejections based on Kitai with Goldszmidt

Claims 6 and 7 were rejected under Section 103 in view of Kitai combined with Goldszmidt. As a justification for combining Kitai and Goldszmidt, the Office Action asserts on page 10 that the combination would have been obvious because it "would have an efficient communication system to process control and monitor the delivery of packet to control the traffic load." But this is not a teaching of the prior art – it is an unsupported assertion by the Office. No supporting citation to Kitai, to Goldszmidt, or to any other source of prior art is given. A general unsupported assertion that the combination would be efficient is not specific evidence that one of skill would have combined these two particular references. For at least this reason, the rejections under Section 103 based on Kitai with Goldszmidt should be withdrawn.

Moreover, Goldszmidt is about *receiving* packets out of sequence, not *sending* them out of sequence. As noted at column 11 lines 7-9: "Each packet may travel along a different route and arrive at their destination at different times or out of sequence and the receiving computer reassembles the original information." Goldszmidt views out-of-sequence packets as a problem to be addressed, not as an advantage. In short, Goldszmidt does not teach intentionally sending packets out of sequence, as required by claims 6 and 7. Kitai does not even discuss packet "sequence". Accordingly, the combination of Kitai with Goldszmidt fails to teach the claimed

limitation of sending packets out of sequence, and for that reason as well the rejections based on that combination should be withdrawn.

Further, with respect to the encrypted sequence number limitation of claim 7, neither Kitai nor Goldszmidt even mentions encryption, much less teaches the claimed limitation. This is yet another reason to withdraw the rejection of claim 7.

Section 103 Rejections based on Kitai with Albright

Claims 10, 12, and 18 were rejected under Section 103 in view of Kitai combined with Albright. As a justification for combining Kitai and Albright, the Office Action asserts on page 11 that the combination would have been obvious "because it would have an efficient communications system that provides a number of point-to-point channels with different carriers and clocks through multiplexing network to improve network traffic and failure." But this is not a teaching of the prior art – it is an unsupported assertion by the Office. No supporting citation to Kitai, to Albright, or to any other source of prior art is given. A general unsupported assertion that the combination would be efficient is not specific evidence that one of skill would have combined these two particular references. For at least this reason, the rejections under Section 103 based on Kitai with Albright should be withdrawn.

Moreover, the alleged justification for combining the references, and the reliance on Albright, each apparently confuse *serial* networks with *parallel* networks. Serial networks are in series, with a packet traveling first through one network and then through the other; if one of the networks in a serial configuration fails, then a packet cannot complete its trip. Parallel networks are side-by-side, so a packet travels through one network or the other network but not both; if one of the networks fails then the packet can complete its trip without using the failed network by using the other network instead. Albright teaches use of serial network configurations, as shown for instance in Albright Figures 1, 2, and 3. Figure 2 of Albright shows parallel *links* between two serial networks but the networks themselves are in series, not parallel. By contrast, the present invention is directed to *parallel networks*, as stated expressly in the claims and illustrated for example in application Figures 5 and 6.

Albright's reliance on series networks is further evident in Albright's focus on NNIs – network-to-network interfaces used to connect two networks in series. NNI's are discussed in the present application's discussion of prior art at page 5:

Figure 4 illustrates a prior art response to the incompatibility of frame relay networks of different carriers. A special "network-to-network interface" (NNI) 402 is used to reliably transmit data between the two frame relay networks A and B. NNIs are generally implemented in software at carrier offices. Note that the configuration in Figure 4 does not provide additional reliability by using two frame relay networks 106, because those networks are in series rather than in parallel. If either of the frame relay networks A, B in the Figure 4 configuration fails, there is no path between site 1 and site 2; adding the second frame relay network has not increased reliability. By contrast, Figure 1 increases reliability by placing the frame relay networks in parallel, so that an alternate path is available if either (but not both) of the frame relay networks fails. Someone of skill in the art who was looking for ways to improve reliability by putting networks in parallel would probably not consider NNIs pertinent, because they are used for serial configurations rather than parallel ones, and adding networks in a serial manner does not improve reliability.

Accordingly, the rejections based on Albright and Kitai should be withdrawn, if only because Albright and Kitai fails to teach the claimed parallel private network innovations.

Section 103 Rejections based on Kitai with Pearce and Goldszmidt

Claims 19-21 were rejected under Section 103 in view of Kitai combined with Pearce and also with Goldszmidt. As elsewhere in the Office Action, the only asserted ground for combining the references is a broad one ("reliability and security" and efficiency) that could be asserted for almost any combination of references – these reasons are not specific to these particular references. Nor is any evidence given of a suggestion or motivation in the art that would have led one of skill to focus on and combine these three references rather than focusing on other references. For at least this reason, the rejections of claims 19-21 should be withdrawn.

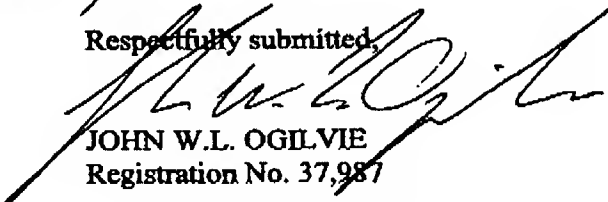
C nclusion

In light of the above, Applicants and Assignee respectfully submit that all pending claims are allowable. They request that the rejections be withdrawn, and that the claims be allowed and passed to issue. Their silence here does not signify agreement or acquiescence in the Office Action's assertions, and they reserve all arguments.

If any impediment to the allowance of these claims remains after entry of this Response, the Examiner is strongly encouraged to call John Ogilvie at 801-566-6633 so that such matters may be resolved as expeditiously as possible.

DATED this 4th day of February, 2004.

Respectfully submitted,


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